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JILL A. STERN
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April 21, 1992

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Motorola Satellite Communications, Inc.
ET Docket No. 92-28; File No. PP-32

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-
with an original and four copies of "Opposition to Request for
Confidential Treatment" with respect to the above-referenced
proceeding.

Should there be any questions concerning this matter, kindly
communicate with the undersigned.

Sincerely,

Jill Abeshouse Stern

Jill Abeshouse Stern
Counsel for Ellipsat Corporation

JAS:csg

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

| | | |
|----------------------------------|---|---------------------|
| In the Matter of: |) | |
| |) | |
| MOTOROLA SATELLITE |) | ET Docket No. 92-28 |
| COMMUNICATIONS, INC. |) | |
| |) | PP-32 |
| Request for Pioneer's Preference |) | |
| to Establish a Low-Earth Orbit |) | |
| Satellite System in the 1610- |) | |
| 1626.5 MHz Band. |) | |

OPPOSITION TO REQUEST
FOR CONFIDENTIAL TREATMENT

Ellipsat Corporation ("Ellipsat"), by its attorneys, hereby opposes the request for confidentiality of Motorola Satellite Communications, Inc. ("Motorola"), filed April 10, 1992, in connection with the above-referenced pioneer's preference request. Ellipsat seeks denial of Motorola's request and the immediate return of the confidential materials submitted by Motorola unless public inspection is permitted.

On April 10, 1992, Motorola submitted additional materials and information to the Commission in support of its pending request for a pioneer's preference. Motorola sought confidential treatment of these materials on the grounds that the materials and information are "trade secrets and commercial, financial or technical data which must be guarded from Motorola's

competitors."^{1/} According to Motorola, the information consists of patent applications, experimental test results and simulations.

Ellipsat strongly opposes confidential treatment of the Motorola submission. The submission relates directly to the pioneer's preferences claimed by Ellipsat and Motorola, among others. Significantly, all of the parties in this proceeding -- Ellipsat, TRW, Loral, Constellation and AMSC -- have vigorously opposed a preference award to Motorola. In their oppositions to Motorola's preference request, filed on April 8, 1992, these five parties agree that Motorola is not entitled to a preference on the facts and, even more importantly, a preference award to Motorola would abdicate the Commission's rulemaking and licensing responsibilities under the Communications Act and the Administrative Procedure Act. Ellipsat and the other parties expressed concern that a preference award would bestow a global monopoly on Motorola, thereby denying the opportunity for meaningful consideration of the other system proposals.

Given the contested nature of this proceeding, it would be highly improper to allow Motorola's confidential materials to be submitted in the record and for a decision to be based, even in part, upon information that is not subjected to review and comment by interested parties. The Commission should not expose

^{1/} Request for Confidential Treatment submitted by Philip L. Malet, Counsel for Motorola Satellite Communications, dated April 10, 1992.

itself to even the appearance of impropriety. Motorola's submission should be returned immediately unless inspection by the parties is permitted.

The Commission's pioneer's preference decisions do not authorize the submission of confidential information. The Pioneer's Preference Order does establish the possibility of "peer review," by "recognized experts" to assist the Commission in evaluating the merits of preference claims.^{2/} However, the Commission made clear that the product of such a peer review process would be placed in the record of the proceeding and made available to all the parties for comment.^{3/}

In the Pioneer's Preference Order, the Commission indicated that requests for pioneer's preference are adjudicative proceedings under the ex parte rules.^{4/} Ellipsat submits that Motorola's submission violates, in letter and spirit, the Commission's ex parte rules. The submission of confidential material, not requested by the Commission and unavailable to the other parties, contravenes the fundamental policies underlying the ex parte rules. The ex parte rules are designed to ensure that

^{2/} Report and Order, GEN Docket No. 90-217, 6 FCC Rcd 3488, 3494 (1991).

^{3/} Id. at 3494 and n. 11.

^{4/} Id. at 3493.

the Commission's decisional processes are fair, impartial, and otherwise comport with the concept of due process.^{5/}

By submitting confidential materials, Motorola is seeking, in effect, to make a written ex parte presentation directed to the merits or outcome of the pioneer's preference proceeding, and to exclude the other parties from that presentation. Indeed, the mere filing of a request for confidentiality, in this context, must be treated as an improper substantive communication because it was intended to create an appearance that Motorola has proprietary information to protect.^{6/} This conduct, in Ellipsat's view, warrants immediate return of the confidential materials and possibly imposition of sanctions for violation of the ex parte rules.

^{5/} 47 C.F.R. § 1.1200.

^{6/} From all appearances, Motorola has not submitted any information that would affect Ellipsat's previous assessments and conclusions about Motorola's ineligibility to receive a preference. Nonetheless, it bears emphasis that the mere filing of confidential materials, alleged to be relevant to the proceeding, has a prejudicial impact upon the parties regardless of what Motorola has actually filed.

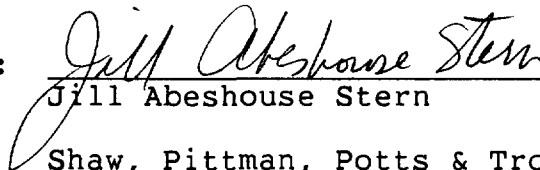
Conclusion

For the foregoing reasons, Ellipsat urges denial of Motorola's request for confidential treatment and return of the materials for which confidentiality has been requested unless inspection is permitted. In addition, the Commission should evaluate whether sanctions under Commission Rule 1.1216 are appropriate, including disqualification of Motorola from further participation in this proceeding for violating the ex parte rules.

Respectfully submitted,

ELLIPSAT CORPORATION

By:



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April 21, 1992

CERTIFICATE OF SERVICE

I, Carla S. Gales, hereby certify that a copy of the foregoing document was served by first-class mail, postage prepaid, this 21st day of April, 1992 on the following persons:

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